



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11198687

DATE: NOV. 27, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for an Advanced Degree Professional

The Petitioner, a software development and consultancy business, seeks to employ the Beneficiary as a programmer analyst. It requests classification of the Beneficiary as an advanced degree professional under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the grounds that (1) the Petitioner did not establish that the Beneficiary has the requisite educational degree to qualify for classification as an advanced degree professional and (2) the minimum educational requirement of the labor certification does not support the requested visa classification of advanced degree professional.

On appeal the Petitioner asserts that the Beneficiary has the requisite educational degree to qualify for classification as an advanced degree professional, but does not contest the Director’s determination that the minimum educational requirement of the labor certification is less than a bachelor’s degree.

Upon *de novo* review, we conclude that the Petitioner has not established that the labor certification supports the requested visa classification of advanced degree professional. As this is a fundamental element of eligibility which the Petitioner has not satisfied, we will reserve the remaining issue of whether the Beneficiary has the requisite educational degree to qualify for advanced degree professional classification.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the

foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

A. Labor Certification Requirements Do Not Support Advanced Degree Professional Classification

A petition for an advanced degree professional must generally be accompanied by a valid, individual labor certification. 8 C.F.R. § 204.5(k)(4)(1). The regulations state that to be eligible for the requested classification, the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree or the equivalent. 8 C.F.R. § 204.5(k)(4)(i). The regulation at 8 C.F.R. § 204.5(k)(2) defines “advanced degree” as follows:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

If the labor certification requirements allow for less than a baccalaureate degree, therefore, the position will not qualify for advanced degree professional classification.

In order to determine what a job opportunity requires, USCIS must look to “the language of the labor certification job requirements.” *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job’s requirements must involve reading and applying the plain language of the labor certification application form. *Id.* at 834. Moreover, we read the labor certification as a whole to determine its requirements. “The Form ETA 9089 is a legal document and as such the document must be considered in its entirety.” *Matter of Symbioun Techs., Inc.*, 2010-PER-10422, 2011 WL 5126284 (BALCA Oct. 24, 2011) (finding that a “comprehensive reading of all of Section H” of the labor certification clarified an employer’s minimum job requirements).¹

The education, training, experience, and other requirements for the proffered position are set forth in section H of the labor certification. In this case section H states that the proffered position of programmer analyst has the following requirements:

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| 4. | Education: Minimum level required: | Bachelor’s degree |
| 4-B. | Major Field(s) of Study: | Computer Science, CIS, MIS |
| 5. | Is training required in the job opportunity? | No |
| 6. | Is experience in the job offered required? | Yes |

¹ Although we are not bound by decisions issued by the Board of Alien Labor Certification Appeals (BALCA), we may nevertheless take note of the reasoning in such decisions when considering issues that arise in the employment-based immigrant visa process.

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| 6-A. | How long? | 60 months |
| 7. | Is an alternate field of study acceptable? | Yes |
| 7-A. | What field(s) of study? | Engineering (any), CIS, MIS, Business, or related field |
| 8. | Is an alternate combination of education and experience acceptable? | Yes |
| 8-B/C. | How much education and experience? | Combination of college level educational degree[s] equivalent to U.S. bachelor of science degree plus 5 years of experience |
| 9. | Is a foreign educational equivalent acceptable? | Yes |
| 10. | Is experience in an alternate occupation acceptable? | Yes |
| 10-A. | How long? | 60 months |
| 10-B. | What job title(s)? | Analyst / Software Engineer or jobs with similar job duties . . . |
| 14. | Special skills or other requirements: | |

Candidate should possess a bachelor degree or foreign equivalent in Computer Science, Business, Engineering (any), CIS, MIS, or in a related field and 5 years of work experience using JavaScript, Java, CSS and HTML is a must. Job experience must be in job offered or alternate occupation like Analyst / Software Engineer or jobs with similar job duties but given another designation. In the alternate [*sic*] will accept a combination of degree(s) that is equivalent to a U.S. bachelor's degree/equivalent with 5 years of relevant work experience.

The plain language of the labor certification makes clear in sections H.8-B and H.14 that the minimum educational requirement for the job of programmer analyst, as an alternative to a U.S. bachelor's degree or a foreign equivalent degree, is "a combination of degree(s)" that are "equivalent to [a] U.S. bachelor of science degree." In his decision the Director cited this language and indicated that it did not support advanced degree professional classification for the job offered because it did not require the minimum of a completed bachelor's degree. The Director concluded that the proffered position was ineligible for classification as an advanced degree professional.

In its appeal brief the Petitioner reiterates the minimum educational and experience requirements as stated in sections H.4, H.6, H.7, H.9, and H.10 of the labor certification, and confirms that it "is also willing to accept in the alternate a combination of college level educational degree [*sic*] equivalent to U.S. Bachelor Degree" as stated in section H.8 of the labor certification. The Petitioner states that it does not dispute these requirements, and does not contend that the Director misinterpreted them in his decision. Thus, the Petitioner provides no grounds for us to overturn the Director's decision on this issue. Furthermore, we agree with the Director that the plain language in sections H.8 and H.14 of the labor certification indicates that the minimum educational requirement for the proffered position is less than a U.S. bachelor's degree, or a foreign equivalent degree. For example, the language would appear to allow an individual to qualify based on combining two associate's degrees, which would be less than a bachelor's degree. Therefore, the labor certification does not support the requested visa classification of advanced degree professional. Accordingly, the petition cannot be approved.

B. Beneficiary's Eligibility for Advanced Degree Professional Classification

As previously indicated, we will reserve the remaining issue of whether the Beneficiary has the requisite educational degree to qualify for advanced degree professional classification. It is unnecessary to address this issue now as the labor certification does not support the petition for an advanced degree professional.

III. CONCLUSION

The labor certification does not support the requested classification of advanced degree professional because both the primary and the alternate requirements do not require at least a master's degree or a bachelor's degree followed by five years of qualifying experience. The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.